

provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4449 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.--1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 1973, No. 85, § 10; 1973, No. 195 (Adj. Sess.), § 3, eff. April 2, 1974; 1979, No. 123 (Adj. Sess.), § 5, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 7, eff. April 28, 1982; 1985, No. 52, § 4, eff. May 15, 1985; 1985, No. 188 (Adj. Sess.), § 5; 1987, No. 76, § 18; 1989, No. 234 (Adj. Sess.), § 1, No. 280 (Adj. Sess.), § 13. Amended 1993, No. 232 (Adj. Sess.), § 32, eff. March 15, 1995.

#### **§ 6086a. Generators of radioactive waste**

No land use permit will be issued for a development which generates low-level radioactive waste unless it shows that it will have access to a low-level radioactive waste disposal facility and that the facility is expected to have sufficient capacity for the waste.--Added 1989, No. 296 (Adj. Sess.), § 7, eff. June 29, 1990.

#### **§ 6087. Denial of application**

(a) No application shall be denied by the board or district commission unless it finds the proposed subdivision or development

detrimental to the public health, safety or general welfare.

(b) A permit may not be denied solely for the reasons set forth in subdivisions (5), (6) and (7) of section 6086(a) of this title. However, reasonable conditions and requirements allowable in section 6086(c) of this title may be attached to alleviate the burdens created.

(c) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration.--1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970.

#### **§ 6088. Burden of proof**

(a) The burden shall be on the applicant with respect to subdivisions (1), (2), (3), (4), (9) and (10) of section 6086(a) of this title.

(b) The burden shall be on any party opposing the applicant with respect to subdivisions (5) through (8) of section 6086(a) of this title to show an unreasonable or adverse effect.--1969, No. 250 (Adj. Sess.), § 13, eff. April 4, 1970.

#### **§ 6089. Appeals**

(a) (1) An appeal from the district commission shall be to the board and shall be accompanied by a fee prescribed by rule of the board, which shall be reasonably related to the costs associated with hearing the appeal.

(2) An appellant to the board, under this section, shall file with the notice of appeal a statement of the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant.

(3) The board shall hold a de novo hearing on all findings requested by any party that files an appeal or cross-appeal, according to the rules of the board.

(4) Notice of appeal shall be filed with the board within 30 days. The board shall notify the parties set forth in section 6085(c) of this title of the filing of any appeal. The board shall proceed as in section 6085(b) and (c) of this title and treat the applicant pursuant to section 814 of Title 3.

(b) An appeal from a decision of the board under subsection (a) of this section shall be to the supreme court by a party as set forth in section 6085(c) of this title.

(c) No objection that has not been urged before the board may be considered by the supreme court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(d) An appeal from the board will be allowed for all usual reasons, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the district commission will be allowed for any reason except no appeal shall be allowed when an application has been granted and no preliminary hearing requested.--1969, No. 250 (Adj. Sess.), § 14, eff. April 4, 1970; amended 1973, No. 85, § 12; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 52, § 1, eff. May 15, 1985; 1987, No. 76, § 10a. Amended 1993, No. 232 (Adj. Sess.), § 34, eff. March 15, 1995.

#### **§ 6090. Recording; duration and revocation of permits**

(a) In order to afford adequate notice of the terms and conditions of land use permits, permit amendments and revocations of permits, they shall be recorded in local land records. Recordings under this chapter shall be indexed as though the permittee were the grantor of a deed.

(b)(1) Any permit granted under this chapter for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet, shall be for a specified period determined by the board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated

in the application, and with due regard for the economic considerations attending the proposed development or subdivision. Other permits issued under this chapter shall be for an indefinite term, as long as there is compliance with the conditions of the permit.--Amended 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.

(b)(2) Expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits. Added 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.

(c) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.--1969, No. 250 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1985, No. 32.

#### **§ 6091. Renewals and nonuse**

(a) Renewal. At the expiration of each permit, it may be renewed under the same procedure herein specified for an original application.

(b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the permit shall be considered expired. For purposes of this section, for a permit to be considered "used," construction must have commenced and substantial progress towards completion must have occurred within the three-year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure, or unless, at the time the permit is issued or in a subsequent proceeding, the district commission or board provides that substantial construction may be commenced more than three years from the date the permit is issued.--1991, No.111, § 2, eff. June 28, 1991; Amended, 1993, ,No. 232 (Adj. Sess) § 36, eff. June 21, 1994.

(c) Extensions. If the application is made for an extension

prior to expiration the district commission may grant an extension and may waive the necessity of a hearing.--1969, No. 250 (Adj. Sess.), § 7, eff. April 14, 1970.

(d) Completion dates for developments and subdivisions. Permits shall include dates by which there shall be full or phased completion. The board, by rule, shall establish requirements for review of those portions of developments and subdivisions that fail to meet their completion dates, giving due consideration to fairness to the parties involved, competing land use demands, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission or board shall provide that the completion dates be extended for a reasonable period of time.-- Added, 1993, No. 232 (Adj. Sess.), § 36, eff. June 21, 1994.

#### **§ 6092. Construction**

In the event that the federal government preempts part of the activity regulated by this chapter, this chapter shall be construed to regulate activity that has not been preempted.--Added 1979, No. 123 (Adj. Sess.), § 7, eff. April 14, 1980.

#### **Subchapter 5. Waste facility panel**

##### **§ 6101. Waste facility panel; jurisdiction; rules; fees**

(a) A waste facility panel of the environmental board is created. The panel shall consist of the chair of the environmental board, who shall also be chair of the panel, and four members appointed by the governor and confirmed by the senate. The four members other than the chair shall include at least one current or past member of the water resources board and at least one current or past member of the environmental board. Members other than the chair shall be appointed for terms of four years and shall be entitled to per diem and reimbursement for all necessary and actual expenses. A vacancy shall be filled for the unexpired term in the same manner as the initial appointment.

(b) The waste facility panel shall have exclusive jurisdiction to review decisions and hear and determine appeals as provided in

this subchapter.

(c) The waste facility panel shall operate under the rules of the environmental board to the extent the board's rules are consistent with this subchapter. The panel may adopt additional rules necessary to carry out this subchapter.

(d) A request for review or an appeal shall be filed with the waste facility panel within 30 days of the secretary's determination or the district commission's decision. The filing shall be accompanied by a fee. The amount, deposit and disbursement shall be as provided for fees assessed for appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

(e) In cases involving an appeal from a decision of a district commission or the agency of natural resources pursuant to this subchapter, the chair may assign current or alternate members of the environmental board to sit on cases when fewer than five panel members are available to serve. Added 1993, No. 82, § 5, eff. July 1, 1993.

#### **§ 6102. Parties**

(a) The applicant, the landowner if the applicant is not the landowner, the state, the solid waste management district, the municipality and municipal and regional planning commissions in which the waste facility is located and any adjacent solid waste management district, municipality and municipal and regional planning commissions if the waste facility is located on a boundary shall be parties in any proceeding before the waste facility panel.

(b) An owner or resident of adjoining property may participate in hearings and present evidence to the extent the waste facility would have a direct effect on that property.

(c) In addition to parties under subsections (a) and (b) of this section, in respect to proceedings involving a provisional certification or a determination of the secretary of natural resources, a person shall be entitled to participate as a party under the standards for party status in Rule 24 of the Vermont Rules of Civil Procedure.

(d) In addition to parties under subsections (a) and (b) of

this section, in respect to proceedings involving a decision of a district environmental commission, a person shall be entitled to participate as a party as provided in the statutes and rules applicable to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990; Amended 1991, No. 109, § 4, eff. June 28, 1991.

**§ 6103. Review of provisional certifications**

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a provisional certification under section 6605d of this title. A review under this section shall take precedence over all other matters before the panel.

(b) If the panel finds that any party has established by clear and convincing evidence that the basis for the secretary's determination is not supported, the panel shall deny the provisional certification or issue a provisional certification with conditions, requirements or restrictions consistent with subdivision 6605d(c)(5) of this title.

(c) The panel shall hold a hearing or pre-hearing conference within 20 days of the request for review and shall issue its decision within 20 days of the date the hearing on the matter is adjourned.

(d) A request for review may, but shall not automatically stay the determination of the secretary. An application for a stay shall be acted upon within three days of its receipt.--Added 1989, No. 218 (Adj. Sess.) § 3.

**§ 6103a. Review certificates of need**

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a certificate of need issued under section 6606a of this title.

(b) The findings, and the conditions, requirements or restrictions in the certificate of need shall be presumed to be valid, but may be rebutted by clear and convincing evidence. If rebutted, the panel shall make its own findings, and establish conditions, requirements or restrictions, with respect to the

criteria set forth in section 6606a of this title.--Added 1989, No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

**§ 6104. Review of agency determinations**

(a) The panel shall have jurisdiction to review a determination of the secretary of natural resources with respect to a permit, certification, classification action, or endangered species variance for a solid waste management facility. Amended 1993, No. 92, § 11, eff. July 1, 1993.

(b) Review under this section shall be de novo.

(c) A request for review may, but shall not automatically stay the determination of the secretary.

(d) This section shall not apply to provisional certifications issued under section 6605d of this title.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

**§ 6105. Appeals of district commission decisions**

Appeals of a decision of a district environmental commission in respect to a waste management facility shall be to the panel. Such appeals shall be governed by the provisions and procedures applicable to appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

**§ 6106. Consolidation of act 250 and agency review proceedings**

(a) If the panel is requested to review a determination of the secretary with respect to a permit, certification, air pollution order, classification action, or endangered species variance for a waste management facility which is also a development under this chapter, the panel shall not commence its review until the district commission has issued its final decision.

(b) If a decision of a district commission is appealed and the panel is requested to review a determination of the secretary with respect to the same waste management facility, the panel shall consolidate the proceedings.

(c) If requested by a party, a district commission shall first consider all criteria under subsection 6086(a) of this title, other



than those for which a permit from the secretary of natural resources creates a presumption of a positive finding.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

**§ 6107. Appeals to the supreme court**

Appeals from decisions of the waste facility panel shall be to the supreme court:

(1) pursuant to section 6089 of this title and the applicable rules of the environmental board, with respect to parties under subsections 6102(a), (b) and (d) of this title;

(2) pursuant to the Vermont rules of appellate procedure, with respect to all other parties.--Added 1989, No. 218 (Adj. Sess.), § 3, No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

**§ 6108. Transition authority**

The waste facility panel may transfer and take jurisdiction over any appeal concerning a waste management facility that is pending, on the effective date of this subchapter, before the water resources board or the environmental board upon motion of any party when transfer would serve the public interest and not impose undue hardship; except that the panel may not take jurisdiction over any appeal to the environmental board that was filed before January 1, 1990.--Added 1989, No. 218 (Adj. Sess.), § 3.

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## ENVIRONMENTAL BOARD RULES

### ARTICLE I. GENERAL PROVISIONS

#### Rule 1. Description of the Organization

(A) The environmental board and district commissions were established by Act 250 of the acts of the adjourned session of the 1969 General Assembly of the state of Vermont (Chapter 151 of Title 10).

(B) For administrative purposes the state is divided into nine districts. Each district has a three member commission, with alternate members, appointed by the governor, which serves as a quasi-judicial body with the authority to determine whether and under what conditions a land use permit may be issued for development or subdivision of land subject to the jurisdiction of Act 250. Administrative support for the commissions is provided by a district coordinator and assistants, as required. The location and telephone number of each administrative office is listed in the telephone directory under "Vermont, State of: ENVIRONMENTAL BOARD, District Environmental Commissions." (Amended, effective March 11, 1982 and May 4, 1990.)

(C) The environmental board consists of nine members appointed by the governor. Support for the board consists of the board chair, legal and administrative staff, as required, with offices in Montpelier, Vermont. The board has the following functions: (Amended, effective May 4, 1990 and January 2, 1996.)

## Rule 2.

(1) To serve as a quasi-judicial appellate body to hear appeals from commission decisions, with the authority to determine whether and under what conditions a land use permit may be issued for a development or subdivision of land subject to the jurisdiction of Act 250;

(2) To prepare and adopt rules to interpret and carry out the provisions of Act 250;

(3) To act upon petitions for declaratory rulings concerning the applicabilities of any statutory provision, or any rule or order of the board; (Added, effective March 11, 1982.)

(4) To provide for the fair and efficient management of the permit process through the chair of the board and through the issuance of guidelines for program administration; (Added, effective March 11, 1982 amended, effective January 2, 1996.)

(5) To enter into inter-agency agreements for the administration and enforcement of the permit process; (Added, effective March 11, 1982.)

(6) To initiate administrative and legal proceedings to prevent, restrain, correct or abate any violation of Act 250, these rules, or any permit lawfully issued thereunder. (Added, effective March 11, 1982 and amended, effective January 2, 1996.)

### Rule 2. Definitions

(A) A project is a "development" if it satisfies any of the following definitions:

(1) Any construction of improvements, for any purpose, above the elevation of 2,500 feet;

Rule 2.

(2) The construction of improvements for any commercial or industrial purpose, including commercial dwellings, which is located on a tract or tracts of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres unless the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have jurisdiction apply to development on more than one acre of land. This jurisdiction does not apply to construction for farming, logging, or forestry purposes below the elevation of 2,500 feet. In determining the amount of land, the area of the entire tract or tracts of involved land owned or controlled by a person will be used; (Amended, effective March 11, 1982 and January 2, 1996.)

(3) The construction of a housing project or projects such as cooperatives, apartments, condominiums, detached residences, construction or creation of mobile home parks or trailer parks, or commercial dwellings with ten or more units constructed or maintained on a tract or tracts of land owned or controlled by a person within a radius of five miles of any point on any involved land within a continuous period of five years;

(4) The construction of improvements for state, county or municipal purposes, on a tract or tracts of land involving more than ten acres of land. The computation of involved land shall include the land which is incidental to the use such as lawns,

Rule 2.

parking lots, driveways, leach fields, and accessory buildings. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that a project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction;

(Amended, effective March 11, 1982.)

(5) Any construction of improvements which will be a substantial change of a pre-existing development, and any material change to an existing development over which the board or a district commission has jurisdiction;

(6) The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road. This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of all other roads within the tract of land constructed within any continuous period of ten years commencing after the effective date of this rule shall be included; (Amended, effective March 11, 1982.)



Rule 2.

(7) Any exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material;

(8) The drilling of a well for the testing of an oil or natural gas reservoir, or for the extraction of oil or natural gas;

(9) Any low-level radioactive waste disposal facility proposed for construction under 10 V.S.A. chapter 161 regardless of the acreage involved; and,

(10) Any construction of improvements which is likely to generate low-level radioactive waste, regardless of the acreage involved. (Subsections (9) and (10) added, effective January 2, 1996.) (See 10 V.S.A. Section 6001b.)

(B) "Subdivision" means a person's partitioning or dividing a tract or tracts of land into ten or more lots including all other lots which that person has created through subdivision within an environmental district, or within a five mile radius of any point of subdivided land if any lots have been created in any adjoining district, within any continuous period of five years after April 4, 1970. "Subdivision" shall also mean any material change to an existing subdivision over which a district commission or the board has jurisdiction and any substantial change to a pre-existing subdivision. A subdivision shall be deemed to have been created with the first of any of the following events: (Amended, effective May 4, 1990.)

Rule 2.

(1) The sale or offer to sell or lease the first lot within a tract or tracts of land with an intention to sell, offer for sale, or lease 10 or more lots. A person's intention to create a subdivision may be inferred from the existence of a plot plan, the person's statements to financial agents or potential purchasers, or other similar evidence;

(2) The filing of a plot plan on town records;

(3) The sale or offer to sell or lease the tenth lot of a tract or tracts of land, owned or controlled by a person, when the lot is within an environmental district or within a five mile radius of any point on any other lot created by that person within any continuous period of five years after April 4, 1970.

(Amended, effective May 4, 1990.)

(C) "Commencement of construction" means the construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.

(D) "Construction of improvements" means any physical action on a project site which initiates development for any purpose enumerated in Rule 2(A). Activity which is principally for preparation of plans and specifications that may be required and necessary for making application for a permit, such as test wells and pits (not including exploratory oil and gas wells),

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percolation tests, and line-of-sight clearing for surveys may be undertaken without a permit, provided that no permanent improvements to the land will be constructed and no substantial impact on any of the 10 criteria will result. A district commission or the board may approve more extensive exploratory work prior to issuance of a permit after complying with the notice and hearing requirements of Rule 51 herein for minor applications.

(E) "State, county or municipal purposes" means projects which are undertaken by or for the state, county or municipality and which are to be used by the state, county, municipality, or members of the general public.

(F) "Involved land" includes:

(1) The entire tract or tracts of land upon which the construction of improvements for commercial or industrial purposes occurs; and

(2) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which is incident to the use of the project; and

(3) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which bear some relationship to the land actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship.

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In the event that a project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction. (Amended, effective March 11, 1982)

(G) "Substantial change" means any change in a development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).

(H) "Person" is defined at 10 V.S.A. §6001(14)(A) and (B). (Amended, effective January 2, 1996.)

(I) "Dwelling" means any building or structure or part thereof, including but not limited to hotels, rooming houses, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation.

(J) "Lot" means any undivided interest in land, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, cotenancies and contracts.

(K) "Party" means any person designated as a party under the Act or Rule 14 of these rules. (Amended, effective January 2, 1996.)

(L) "Commercial purpose" means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object having value.

(Added, effective July 15, 1974.)

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(M) "Commercial Dwelling" means any building or structure or part thereof including but not limited to hotels, motels, rooming houses, nursing homes, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation on a temporary or intermittent basis, in exchange for payment of a fee, contribution, donation or other object having value. The term does not include conventional residences, such as single family homes, duplexes, apartments, condominiums or vacation homes, occupied on a permanent or seasonal basis. (Added, effective March 11, 1982.)

(N) "Pre-existing subdivision" shall mean a subdivision exempt under the regulations of the department of health in effect on January 1, 1970 or any subdivision which had a permit issued prior to June 1, 1970 under the board of health regulations, or had pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plans on file as of June 1, 1970 provided such permit was granted prior to August 1, 1970.

(O) "Pre-existing development" shall mean any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971.

(P) "Material change" means any alteration to a project which has a significant impact on any finding, conclusion, term or condition of the project's permit and which affects one or more values sought to be protected by the Act.

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(Q) "Solid waste management district" means a solid waste management district formed pursuant to § 2202a and chapter 121 of Title 24, or by charter adopted by the general assembly.

(R) "Adjoining property owner" means a person who owns land in fee simple, if that land:

(1) shares a boundary with a tract of land where a proposed or actual development or subdivision is located: or

(2) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or a public highway. (§§ (Q) and (R) Added, effective January 2, 1996.)

**Rule 3. Rulemaking, Jurisdictional Opinions and Declaratory Rulings**

(A) Authority for rules and declaratory rulings. The authority to adopt rules and to act upon petitions for declaratory rulings is vested solely in the board.

(B) Petitions for rulemaking. Petitions for the adoption, amendment or repeal of any rule will be entertained by the board. Petitions will be considered and disposed of pursuant to the procedures specified in the Administrative Procedure Act, 3 V.S.A. Chapter 25.

(C) Jurisdictional opinions. Any person seeking a ruling as to the applicability of 10 V.S.A. Chapter 151 (Act 250), these rules or order of the board may request a jurisdictional opinion from a district coordinator in the appropriate environmental district. In addition, district coordinators may issue

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jurisdictional opinions when, in their judgment, the applicability of Act 250, these rules or an order of the board needs to be determined.

(1) If the person who requested the opinion wants it to be a final determination, the district coordinator, at the expense of the requestor, shall serve the opinion on all persons identified in writing by the requestor, or known to the coordinator, as either qualifying as parties under Rule 14(A) or who may be affected by the outcome of the opinion.

(2) Persons who qualify as parties under Rule 14(A) or who may be affected by the outcome of the opinion may request reconsideration from the district coordinator within 30 days of the mailing of the opinion. The filing of a timely request for reconsideration shall stop the period for appeal. A new full period for appeal shall begin on the date of a refusal to reconsider or, if reconsideration is accepted, on the date the reconsidered opinion is mailed.

(3) A jurisdictional opinion of a district coordinator may be appealed to the environmental board by any person who qualifies as a party under Rule 14(A) or who may be affected by the outcome of the opinion. Such appeals shall be by means of a petition for a declaratory ruling under section (D) of this rule. An appeal from a jurisdictional opinion issued by a district coordinator must be filed with the board within 30 days of mailing of the jurisdictional opinion to the person appealing. Failure to appeal within the prescribed period shall render the

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opinion final for all persons to whom it has been mailed. A district coordinator may reconsider, or accept a request for reconsideration of, a jurisdictional opinion at any time upon an adequate showing of a failure to disclose material facts or fraud

(D) Declaratory rulings. Petitions for declaratory rulings as to the applicability of Act 250, these rules, or an order of the board shall be filed with the board and shall be accompanied by a \$25.00 filing fee, an original and ten copies of the petition and the jurisdictional opinion appealed from, and a certificate showing that the following persons have been served: all parties under Rule 14(A) and any other persons on whom the district coordinator served the opinion. Petitions for declaratory ruling will be considered and disposed of promptly. A petition may be treated as a petition for adoption of rules or as a contested case as may be proper under the circumstances. The chair may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board.

(1) Notice of declaratory rulings. The board shall provide due notice of the filing of a petition for declaratory ruling to each party under Rule 14(A) and to any other persons on whom the district coordinator served the relevant jurisdictional opinion. At the cost of the petitioner, the board will publish a notice of the hearing or initial prehearing conference in a local newspaper generally circulating in the area in which the land is located.



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(2) Reconsideration of declaratory rulings. The board may reconsider a declaratory ruling. Any request for reconsideration must be received within 30 days from the date of the declaratory ruling in accordance with Rule 31(A) of these rules, unless the board finds an adequate showing of failure to disclose material facts or fraud. (§§ 3(A), (B), (C) and (D) amended, effective January 2, 1996.) **See 10 V.S.A. § 6007(c).**

#### Rule 4. Subpoenas

The chair of the board, the chair of a district commission, or a licensed attorney representing a party before the board or a district commission may compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. A party not represented by a licensed attorney may submit a written request for a subpoena stating the reasons therefor and representing that reasonable efforts have been made to obtain voluntary compliance with its requests. Costs of service, fees, and compensation shall be paid in advance by the party requesting the subpoena. The board or a district commission may issue subpoenas for the attendance of witnesses or the production of documents on its own motion. In all other respects, the provisions of Rule 45, §§ (a) and (b), of the Vermont Rules of Civil Procedure and 3 V.S.A., §§ 809a and 809b, shall apply and are incorporated herein. (Amended, effective March 11, 1982; May 4, 1990; and January 2, 1996.)